IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No.37 of 1995

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MS.JUSTICE H.N.DEVANI **Sd/-**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
EIMCO ELECON (INDIA) LTD. - Respondent(s)

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Appearance :
MR BB NAIK for Applicant(s) : 1,
SERVED BY RPAD - (N) for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI
Date : 06/12/2005
ORAL JUDGMENT
(Per : HONOURABLE MS.JUSTICE H.N.DEVANI)

1. The Income-tax Appellate Tribunal, Ahmedabad Bench 'B', has referred the following questions

under Section 256(1) of the Income-tax Act, 1961 (the Act) at the instance of the Commissioner of Income-tax:

R.A. No.771/Ahd/94.:

> "Whether, the appellate Tribunal is right in law and on facts in holding that the amount spent on purchase of spare parts is a part of repairs and maintenance of the cars, covered under section 31 and that the provisions of section 37(3A) are not attracted ?"

R.A. No.772/Ahd/1994.:

1. Whether, the appellate Tribunal is right in law and on facts in directing the assessing officer to allow depreciation on the cost of building, investment allowance and depreciation on the cost of plant and machinery without deducting there from the amount of subsidy received by the assessee ?

2. Whether, the appellate Tribunal is right in law and on facts in allowing the assessee's claim for investment allowance of Rs.1,06,670/- spent on internal telephone exchange treating the same as office appliances ?

2. The Assessment Year is 1984-85 and the relevant accounting period is the year ended on 30th June, 1983.

3. Heard Mr.B.B.Naik, learned Standing Counsel on behalf of the applicant-revenue. Though served, there is no appearance on behalf of the respondent-assessee.

4. As regards the question referred in relation to Reference Application No.771/Ahd/1994, Mr.Naik has drawn attention to a decision of the Apex Court in the case of Britannia Industries Ltd. Vs. Commissioner of Income-tax & another, [2005] 278 ITR 546 (SC) to submit that the issue stands concluded in favour of the revenue. In the circumstances, it is not necessary to set out the facts and contentions in detail.

5. Applying the ratio of the aforesaid decision to the facts of the present case, it is held that the Tribunal was not justified in holding that the amount spent on purchase of spare parts is a part of repairs and maintenance of cars, covered under Section 31 and that the same does not attract the provisions of Section 37(3A) of the Act.

6. The question is, accordingly, answered in the negative i.e. in favour of the revenue and against the assessee.

7. In relation to question No.1 referred from Reference Application No.772/Ahd/1994, Mr.Naik has very fairly pointed out that the controversy in issue stands concluded in favour of the assessee by a decision of the Apex Court in the case of Commissioner of Income-tax Vs. P.J.Chemicals Ltd., [1994] 210 ITR 830 (SC).

8. Applying the ratio of the aforesaid decision to the facts of the present case, question No.1 is answered in the affirmative i.e. in favour of the assessee and against the revenue.

9. In relation to question No.2, Mr.Naik has drawn attention to a decision of this Court in case of Commissioner of Income-tax Vs. Tarun Commercial Mills Ltd., [1985] 151 ITR 75 (Guj.) wherein this Court has approved the view taken by the Himachal Pradesh High Court in the case of CIT Vs. Mohan

Meakin Breweries Ltd., [1980] 122 ITR 203 wherein it has been held that internal telephone system installed by the assessee-company in their factories with 50 telephone lines was a “plant” and not an “office appliance” and as such was entitled to development rebate under Section 33 of the Act.

10. In the circumstances, following the aforesaid decisions it is held that the Tribunal was justified in allowing the assessee's claim for investment allowance of Rs.1,06,670/- spent on internal telephone exchange. The question is, accordingly, answered in the affirmative i.e. in favour of the assessee and against the Revenue.

11. The reference stands disposed of accordingly. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

Sd/-
[H.N. DEVANI, J]

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*Bhavesh**